

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR No. 1470 of 2005

Date of Decision: 26.9.2006

Bhajan Singh

...Petitioner

Versus

Bhupinder Singh and others

....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri R.M. Singh, Advocate, for the petitioner.  
Shri R.S. Ghuman, Advocate and  
Ms. Shashi Ghuman, Advocate, for the respondents.

JUDGMENT

The defendant is aggrieved against the order passed by the learned trial Court on 23.2.2005, whereby his application for permission to lead secondary evidence of an agreement between the parties dated 31.5.2000, was dismissed.

The defendant, while filing the written statement has produced a photo copy of the said agreement. Subsequently, the defendant also produced carbon copy of the said agreement but since the original was stated to be lost, the defendant moved an application for permission to lead secondary evidence, which has been declined by the learned trial Court on the ground that the defendant has not explained that how he has retained photocopy of the said agreement and that he has not produced such document along with the written statement in terms of Order 13 Rule 1 CPC.

It is not the case of the defendant-petitioner that the original of the agreement was with the plaintiff. It is the stand of the defendant that he

lost the original of the agreement when he lost his bag in the Court complex. The defendant has not only produced photocopy of the said agreement along with the written statement but also produced carbon copy of the same. It is a sheer conjecture to return a finding that the original and the carbon copy cannot be with the defendant alone. The genuineness of the agreement or the fact whether the copy is available with the plaintiff or defendant are the questions which can be decided only if the defendant is permitted to lead secondary evidence in respect of such document. The secondary evidence cannot be denied on the ground as to how the defendant has the carbon copy of the same. Still further, the reasoning given by the learned trial Court that the original thereof was not produced before framing the issues, is not a fact, which will debar the defendant to lead the secondary evidence. The provisions of Order 13 Rule 1 CPC are not mandatory. Therefore, mere fact that the original agreement was not produced before the framing of the issues cannot be ground to decline the permission to lead secondary evidence when the photocopy of the agreement was produced along with the written statement. The reasoning given by the learned trial Court cannot be sustained.

Consequently, the present petition is allowed. The impugned order dated 23.2.2005 is set aside. The defendant-petitioner is permitted to lead secondary evidence in respect of agreement dated 31.5.2000.

26-09-2006  
ds

(HEMANT GUPTA)  
JUDGE